

# Court of Appeals, State of Michigan

## ORDER

People of MI v Jeremy Lynn Clark

Docket No. 268865

LC No. 05-000193-01

Helene N. White  
Presiding Judge

Michael J. Talbot

Christopher M. Murray  
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting leave to appeal, the Court orders that the January 18, 2006 order of dismissal entered by the Wayne County Circuit Court is VACATED. A trial court may dismiss charges without the prosecution's consent only if there is (1) insufficient evidence or (2) a permissive statute allows the court to do so. *People v Monday*, 70 Mich App 518, 521; 245 NW2d 811 (1976), citing *People v Stewart*, 52 Mich App 477, 483; 217 NW2d 894 (1974). It appears from the limited record that the court took defendant's guilty plea "under advisement along with regular terms and conditions of probation," over the prosecution's objection, and then placed defendant on probation for a year without formally accepting the plea and entering a conviction. After a year the court dismissed the charge upon compliance with the conditions of probation. There is no statutory authority that permits the circuit court to follow this procedure. If the court intended to delay defendant's sentencing under MCL 771.1(2), the court had no authority under that provision to dismiss the charge over the prosecution's objection. *People Leonard*, 144 Mich App 492, 495-496; 375 NW2d 745 (1985); *Monday, supra*, at 521-522.

Notwithstanding the foregoing, it is unclear whether the prosecutor waived objection to the dismissal by failing to object when the court took the action of dismissing the charge at the delayed sentencing. It is unclear whether the prosecutor was present at the hearing or had notice of the hearing. It is also unclear whether the court announced its intention to dismiss the charge, rather than enter a conviction and close the case.

Accordingly, the matter is REMANDED to the circuit court for findings regarding whether the prosecutor waived the issue, and if no waiver is established, for reinstatement of the charge or a statement of the authority under which the charge was dismissed.

This order is to have immediate effect, MCR 7.215(F)(2). ~~The Court~~ retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 30 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk